

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1245 of 1998

in

SPECIAL CIVIL APPLICATION No 2052 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE P.B.MAJMUDAR

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : YES
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES
5. Whether it is to be circulated to the Civil Judge? : YES

GUJARAT WATER RESOURCES DEVELOPMENT CORPORATION LTD.

Versus

DAHYABHAI SHIVRAMBHAI PATEL

Appearance:

MR PARESH UPADHYAY for Appellants
MR GM AMIN for Respondent No. 1
MR ST MEHTA, AGP for Respondent No. 2

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE P.B.MAJMUDAR

Date of decision: 08/12/1999

ORAL JUDGEMENT

(Per : Panchal, J.)

This appeal, which is instituted under Clause 15 of the Letters Patent, is directed against judgment dated August 24, 1998, rendered by the learned Single Judge in Special Civil Application No. 2052/87, by which the appellants are directed to treat the respondent no.1 as clerk on work-charged establishment from July 18, 1986 to November 22, 1991 and accord all consequential benefits including seniority.

2. The respondent no.1 was recruited as a clerk on daily wages with effect from June 3, 1981 in the Office of Gujarat Water Resources Development Corporation. Since November 22, 1981 the respondent no.1 was given appointment as clerk for 29 days in a month and was continued as such till March 20, 1985, but afterwards he was continued as a clerk on daily wages basis. On June 7, 1985, Executive Engineer of the Gujarat Water Resources Development Corporation addressed a letter to the District Employment Exchange Officer, Palanpur and requested him to recommend names of 25 candidates for the post of clerks, as six vacancies had arisen. In view of the requisition made by the Executive Engineer of Gujarat Water Resources Development Corporation, District Employment Exchange Officer recommended names of those candidates who, according to him, were possessing the necessary qualifications including that of experience. On the basis of recommendation made by the District Employment Exchange Officer, 8 persons were appointed as clerks on 29 days basis by an order dated October 6, 1986. The grievance made by the respondent no.1 was that his name was enrolled with District Employment Exchange Officer earlier in point of time i.e. on October 3, 1981 and, therefore, his name ought to have been recommended by the District Employment Officer for appointment to the post of clerk in Gujarat Water Resources Development Corporation. On completion of 5 years experience, case of the respondent no.1 was considered for regularisation in service and the Executive Engineer of Gujarat Water Resources Development Corporation addressed a letter dated July 18, 1986 to the Superintending Engineer of the Corporation and recommended that the respondent no.1 should be appointed on work-charged establishment on regular basis. The claim of the respondent no.1 was that he ought to have been regularised in service with effect from June 3, 1981. Under the circumstances, he filed Special Civil Application No. 2052/87 and prayed the Court to issue an appropriate writ directing the present appellants to treat him as a permanent employee with effect from 1981 and give all consequential benefits to

him.

3. An affidavit-in-reply was filed on behalf of the appellants by Mr. V.R.Dave, who was then Administrative Officer of the Corporation. In the reply it was inter-alia averred that the respondent no.1 was not given appointment after following proper selection procedure and, therefore, the respondent no.1 was not entitled to the reliefs claimed in the petition. What was stressed in the reply was that the case of the respondent no.1 was fairly considered by the Corporation and, therefore, the respondent no.1 was not entitled to regularisation in service with effect from 1981.

4. Mr. D.M.Chauhan, who was then District Employment Exchange Officer, District : Banaskantha, had also filed affidavit-in-reply controverting the averments made in the petition which was filed by respondent no.1. In the said reply, it was mentioned that according to the information available with the Office of Employment Exchange, respondent no.1 had no experience as clerk and, therefore, his name was neither forwarded nor recommended to Gujarat Water Resources Development Corporation.

5. After hearing the learned Counsel for the parties and taking into consideration the relevant record, the learned Single Judge has partly allowed the petition by directing the present appellants to treat the present respondent no.1 a clerk on work-charged establishment from July 18, 1986 to November 22, 1991 and to accord all consequential benefits including that of seniority, by the impugned judgment, which has given rise to present appeal.

6. Mr.Paresh Upadhyay, learned Counsel for the appellants submitted that it was never notified by respondent no.1 before the District Employment Exchange Officer that he had necessary experience of 1 to 2 years as clerk and in such circumstances, when name of respondent no.1 was not recommended for appointment as clerk by the District Employment Exchange Officer, the appellants were justified in not regularising the services of respondent no.1 with effect from June 3, 1981. The learned Counsel for the appellants stressed that initial recruitment of respondent no.1 was not in accordance with law and, therefore, the learned Single Judge should not have directed the appellants to treat respondent no.1 as Clerk on work-charged establishment with effect from July 18, 1986 to November 22, 1991. What was claimed was that the judgment rendered by the learned Single Judge proceeds on the footing that the

District Employment Exchange Officer was not justified in not recommending the name of respondent no.1 for appointment as clerk when names of other candidates were forwarded and, therefore, basis of the impugned judgment being erroneous, it should be set aside.

7. Mr. Gopinath Amin, learned Counsel for respondent no.1 pleaded that in view of letter dated July 18, 1986, which was addressed by the Executive Engineer of Gujarat Water Resources Development Corporation to the Superintending Engineering of the Corporation, the learned Single Judge was justified in directing the appellants to treat respondent no.1 as clerk on work-charged establishment from July 18, 1986 and, therefore, the just directions given by the learned Single Judge should not be interfered with by the Court in the present appeal.

8. Mr. S.T.Mehta, learned A.G.P. appearing for Employment Exchange Officer, Palanpur, has adopted the arguments advanced by the learned Counsel for the appellants and submitted that having regard to the totality of the facts and circumstances of the case, the appeal should be allowed.

9. We have heard the learned Counsel for the parties and also taken into consideration the documents which were produced on the record of the petition. In order to decide the issue involved in the petition which was filed by respondent no.1, it is not necessary to go into the question whether the Employment Exchange Officer, Palanpur was justified or not in not recommending the name of respondent no.1 for appointment on the post of clerk when he made recommendation to Executive Engineering, Gujarat Water Resources Development Corporation pursuant to requisition dated June 7, 1985 because on completion of 5 years service, Executive Engineer of Gujarat Water Resources Development Corporation had recommended to his higher officer to appoint the respondent no.1 on work-charged establishment by addressing a letter dated July 18, 1986. It is not the case of the appellants that when the recommendation was made by the Executive Engineer on July 18, 1986 to appoint respondent no.1 on work-charged establishment, he was not fulfilling the requisite qualifications. Though the learned Counsel for respondent no.1 had pressed the prayer to regularise respondent no.1 as clerk on work-charged establishment from June 3, 1981 till November 22, 1991, the learned Single Judge has directed the appellants to treat respondent no.1 as clerk on work-charged establishment only from July 18, 1986 i.e.

the date on which the Executive Engineer had recommended to his higher officer to appoint respondent no.1 on the work-charged establishment. The directions given by the learned Single Judge cannot be said to be unreasonable or illegal in any manner in view of the recommendation which was contained in the letter dated July 18, 1986 addressed by the Executive Engineer of the Corporation itself. Under the circumstances, we are of the opinion that no case is made out by the appellants to interfere with the impugned judgment.

The appeal, therefore, fails and is dismissed, with no orders as to costs. Interim relief granted earlier is hereby vacated.

(patel)